

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - X
UNITED STATES OF AMERICA

- against -

PHILLIP A. KENNER,
also known as,
“Philip A. Kenner,” and
TOMMY C. CONSTANTINE,
also known as
“Tommy C. Hormovitis,”

DECLARATION OF
MADELINE O’CONNOR
13-CR-607 (S-2)(JFB)

Defendants.

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I, Madeline O’Connor, hereby declare pursuant to 28 U.S.C. § 1746, under penalty of perjury, that I am an Assistant United States Attorney, of counsel to Seth D. DuCharme, Acting United States Attorney, Eastern District of New York, attorney for the United States of America (the “United States” or the “government.”) I submit this declaration and the following exhibits, in support of the United States’ motion for summary judgment and in support of the United States’ motion for discovery pursuant to Fed. R. Civ. P. 56(d):

1. Government Exhibit (“GX”) 1 Danske’s Proof of Claim, *In re Lehman Brothers Holdings Inc.*, Docket No. 08-13555 (Bankr. S.D.N.Y.), Claim No. 19487;
2. GX- 2 Declaration of Daniel Ehrmann in Support of Debtors’ Motion, Id. at Docket Entry (“DE”) 21409;
3. GX-3 Lehman and Danske 9/23/08 Loan Value Comparisons, produced by Danske on August 6, 2020, Danske Bate Stamp (“BS”) number 17822;
4. GX-4 Danske’s settlement with Goldman Sachs; *In re Lehman Brothers Holdings Inc.*, Docket No. 08-13555 (Bankr. S.D.N.Y.), DE 23002 and 31123;

5. GX-5 Danske's Objections to Discovery, DE 863;
6. GX-6 Complaint in *Juneau v. Kenner, et al.*, CV-08-8284 (C.D. Ca. 2008), DE 1
7. GX-7 Deal Status Report Cabo San Lucas Land, Danske BS numbers 0016935-0016939;
8. GX-8 Credit Application, Danske BS numbers 0016943-0016962;
9. GX-9 Complaint in *Jowdy v. Berard*, Case No. BC436632 (L.A. Cty. CA 2010)
10. GX-10 Organizational Charts, Danske BS numbers 0011015-0011030;
11. GX-11 Contracts with Legacy Properties, LLC, Danske BS numbers 0012845-0012862 and 0012870-0012880;
12. GX-12 Chart of lawsuits and newspaper and magazine articles;
13. GX-13 *Former Financial Advisor to NHL Players Attempts to Close the Book on Fraud Allegations by Luring Fortune Reporter to Arizona Chicken Coop to Tell His Side of the Story.*;
14. GX-14 Declaration of Kenneth A. Jowdy, *United States v. Kenner, et.al.*, CR-13-607 (S-2), DE 611-1;
15. GX-15 Government's Document Demands;
16. GX-16 Danske's Due Diligence Report, Danske BS numbers 16889-16921;
17. GX-17 2013 Loan Modification Due Diligence Items and Schedule for Delivery, Danske BS numbers 0017016-0017018;
18. GX-18 2013 Loan Modification Due Diligence Items and Schedule for Delivery, Danske BS numbers 0011692-0011694;
19. GX-19 The Government's Responses to Danske Bank's Objections to the Government's First Set of Requests for Production of Documents. DE 871-4;
20. GX-20 Danske August 23, 2018 letter to government and Danske Agreement with Legacy;
21. GX-21 Complaint in *Little Isle v. Jowdy*, 09-0142 (D. Ct. Az. 2009);

22. GX-22 Complaint in *Moreau v. Kenner*, 08-8640 (C.D. Cal. 2008);
23. GX-23 New York Daily News, April 26, 2009;
24. GX-24 TMZ Sports, June 18, 2009;
25. GX-25 Sports Illustrated, June 19, 2009;
26. GX-26 New York Post, June 19, 2009;
27. GX-27 CBS News, June 19, 2009;
28. GX-28 The Toronto Star, June 19, 2009;
29. GX-29 The Bleacher Report, June 19, 2009;
30. GX-30 New York Daily News, June 20, 2009;
31. GX-31 The Scores Report, June 22, 2009;
32. GX-32 New York Daily News, February 17, 2010;
33. GX-33 New York Daily News, April 28, 2010;
34. GX-34 New York Daily News, October 2, 2010;
35. GX-35 New York Daily News, October 17, 2010;
36. GX-36 *Murray v. Jowdy*, Clark County, NV District Court, Findings of Fact;
37. GX-37 ronaldrichards.com, March 4, 2011;
38. GX-38 New York Daily News, October 23, 2012;
39. GX-39 New York Daily News, June 30, 2013;
40. GX-40 New York Daily News, July 1, 2013;
41. GX-41 Deal Breaker, July 1, 2013;
42. GX-42 New York Daily News, November 13, 2013;
43. GX-43 U.S. Attorney Press Release, November 3, 2013;

44. GX-44 Fortune, November 14, 2013;

45. GX-45 New York Daily News, November 14, 2013; and

46. GX-46 New York Daily News, November 15, 2013.

47. The government respectfully submits that GX-19, and the Affidavit of Kellie Fedkenheuer, dated September 9, 2020, collectively identify the government's document demands, Danske's response to the government's requests (in most cases, Danske refused to provide any response), and how each document demand pertains to an element that Danske must prove to establish its claim to be a bona fide purchaser for value.

48. As described more fully in the government's motion for summary judgment, financial documents produced by Danske, on an informal basis, are incomplete and contradictory, or completely lacking.

49. In addition, numerous documents, produced informally by Danske, appear to be copies of documents of which the government was unable to verify authenticity through normal discovery, such as interrogatories or depositions.

50. Accordingly, based upon the foregoing, the government's motion for summary judgment should be granted and Danske's motion should be denied. In the alternative and under the above circumstances, the government's formal document demands should be

answered by Danske.

Dated: Central Islip, New York
September 9, 2020

Respectfully submitted,
SETH D. DuCHARME
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BY: /s/Madeline O'Connor
Madeline O'Connor
Assistant U.S. Attorney